IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

FRIDAY, THE 14TH SEPTEMBER 2007 / 23RD BHADRA 1929

WP(C).No. 27441 of 2007(P)

PETITIONER:

V. SREEKUMAR, MANAGING PARTNER,
M/S. NEELA SUPER MARKET, NEELA SUPER BAZAR,
VTS ROAD, NEAR TOWN U.P. SCHOOL, ATTINGAL,
TRIVANDRUM.

BY ADV. SRI.R.S.KALKURA
SRI.M.S.KALESH
SRI.HARISH GOPINATH
SRI.V.VINAY MENON

RESPONDENT:

ASSISTANT PROVIDENT FUND COMMISSIONER,
EMPLOYEES PROVIDENT FUND ORGANISATION,
REGIONAL OFFICER, TRIVANDRUM.

BY SMT. T.N. GIRIJA - SC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 14/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

S. SIRI JAGAN, J.

W.P.(C)NO.27441 OF 2007

DATED THIS THE 14th DAY OF SEPTEMBER, 2007

JUDGMENT

The petitioner is the managing partner of a partnership firm running a super bazar. Proceedings were initiated by the respondent for coverage of the super bazar under the Employees Provident Funds and Miscellaneous Provisions Act. According to the petitioner, since the petitioner does not employ the required number of employees, the petitioner's establishment is not liable to be covered under the Act. However, counting the four partners of the firm also as employees of the establishment, by Ext.P3 order, the respondent held that the petitioner's establishment is liable to be covered under the Act. Against Ext.P3 order, the petitioner has filed Ext.P4, which is pending. The same was filed as early as on 24.8.04. Taking into account the pendency of the appeal, the respondent himself by Ext.P7 suspended further action for recovery of the contributions due from the petitioner in respect of his establishment. The petitioner moved the Tribunal for an early hearing of the case

also, which is answered by Ext.P6 stating that the appeal would be taken on its turn after the presiding officer takes charge. Now the complaint of the petitioner is that notwithstanding the above proceedings, the respondent has now passed Ext.P8 order under Section 7A of the Act assessing contributions and demanding payment of the same. The petitioner submits that passing of Ext.P8 order while the appeal against the order directing coverage of the establishment itself is pending before the Tribunal is illegal and unsustainable especially when by Ext.P7 the respondent himself has suspended from recovery of the dues. In the above circumstances, the petitioner challenges Ext.P8 order.

2. I have heard the learned standing counsel appearing for the Provident Fund Organisation also. In view of the fact that the petitioner has got a right of appeal against Ext.P8 order also, I am not inclined to entertain this writ petition at this stage. However, the learned counsel for the petitioner makes a fervent plea that the petitioner may be given some time to approach the Tribunal and move for stay of further proceedings.

Accordingly, I dispose of this writ petition granting the

petitioner two months' time to move the Tribunal and to obtain appropriate orders in the matter. For the said two months further proceedings pursuant to Ext.P8 shall be kept in abeyance.

S. SIRI JAGAN, JUDGE

Acd